



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-1005]

RIN 1625-AA09

Drawbridge Operation Regulation; Hackensack River,
Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operation regulations that govern the PATH Railroad Bridge, mile 3.0, and the Hack-Freight Bridge, mile 3.1, across the Hackensack River, New Jersey. The bridge owners, the Port Authority Trans-Hudson (PATH) and Conrail, submitted requests to revise the operation schedule for the PATH Railroad Bridge and to change the Conrail Hack-Freight to operate remotely. In addition, we will be removing obsolete unnecessary language and requirements from the existing regulation that are now listed under other regulations. It is expected that these changes will continue to meet the reasonable needs of navigation.

DATES: Comments and related material must be received

by the Coast Guard on or before *[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: You may submit comments identified by docket number USCG-2013-1005 using any one of the following methods:

(1) Federal Rulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District Bridge Program, telephone 212-668-7165, e-mail joe.m.arca@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl

Collins, Program Manager, Docket Operations, telephone
202-366-9826.

SUPPLEMENTARY INFORMATION:

Tables of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2013-1005), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If

you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number USCG-2013-1005 in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-1005) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that one would

aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Basis and Purpose

The PATH Railroad Bridge, mile 3.0, has a vertical clearance of 40 feet at mean high water and 45 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.723.

The Hack-Freight Bridge, mile 3.1, has a vertical clearance of 11 feet at mean high water and 16 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.723.

The waterway users are commercial operators.

The owners of the bridges, Port Authority Trans-Hudson Corporation (PATH) and Conrail, submitted requests to the Coast Guard to operate the Conrail Hack-Freight Bridge from a remote location and to change the drawbridge operation for the PATH Bridge.

Under this notice of proposed rulemaking Conrail proposes to operate its Hack-Freight Bridge at mile 3.1, across the Hackensack River, from a remote location, the Conrail Leigh Valley Bridge Office, at all times when a draw tender is not stationed at the bridge. A draw tender may be stationed at the bridge at various times

when it is deemed necessary for safety purposes such as during times when bridge maintenance is being performed.

Conrail operates several other bridges from its Leigh Valley Bridge Office, the Conrail Bridge at mile 2.0, across the Rahway River and the Arthur Kill Bridge at mile 11.6, across Arthur Kill.

Under this notice of proposed rulemaking, the Coast Guard is also changing the drawbridge operation regulations for the PATH Railroad Bridge.

The owner of the PATH Railroad Bridge, the Port Authority Trans-Hudson Corporation (PATH), asked the Coast Guard to change the drawbridge operation schedule for its Path Railroad Bridge, to require at least a two hour advance notice for bridge openings at all times.

In addition, PATH requested that the PATH Railroad Bridge be allowed to remain in the closed position during time periods when commuter rail traffic is heaviest from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m.

PATH agreed to provide additional bridge openings during the commuter closure periods for commercial vessels, from 6 a.m. to 7:20 a.m., 9:20 a.m. to 10 a.m., 4 p.m. to 4:30 p.m. and from 6:50 p.m. to 8 p.m., upon a two hour advance notice, to help facilitate commercial

vessel traffic. Notice may be provided by calling the number posted at the bridge.

As a result of all the above information, it is expected these proposed changes to the drawbridge operation regulations will continue to meet the reasonable needs of navigation.

C. Discussion of Proposed Rule

The Coast Guard proposes to change the drawbridge operation regulations at 33 CFR 117.723, to allow the Conrail Hack-Freight Bridge at mile 3.1, across the Hackensack River to be operated from a remote location, the Lehigh Valley Bridge Office, at all times.

Conrail operates several other Conrail bridges from its Lehigh Valley Bridge Office and believes adding the Conrail Hack-Freight Bridge will help with operational efficiency and safety, as well as being a cost saving measure.

The Coast Guard is also proposing to change the drawbridge operation regulations for the PATH Railroad Bridge at mile 3.0, across the Hackensack River, to allow the PATH Railroad Bridge to require at least a two hour advance notice for bridge openings at all times.

The PATH Railroad Bridge seldom opens for vessel traffic due to its high vertical clearance of 40 feet at mean high water and 45 feet at mean low water and most

of the commercial vessels that normally transit this waterway fit under the bridge without requiring a bridge opening.

The Coast Guard was also asked by PATH to allow its PATH Railroad Bridge to remain in the closed position from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m., Monday through Friday, except Federal holidays, to help facilitate commuter train traffic during time periods when commuter rail traffic is heaviest.

PATH agreed to provide additional bridge openings between 6 a.m. and 7:20 a.m., 9:20 and 10 a.m., 4 p.m. and 4:30 p.m. and from 6:50 p.m. to 8 p.m., to help facilitate commercial vessel traffic, provided a two hour advance notice is given by calling the number posted at the bridge.

Also under this notice of proposed rulemaking we are removing obsolete language from the existing regulation. Paragraph (a)(1), regarding emergency bridge openings for public and local vessels in emergency situations will be removed because it is now listed at 33 CFR 117.31 of the General Drawbridge Operation Regulations.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to

rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866, or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We believe that this rule is not a significant regulatory action because the PATH Railroad Bridge provides adequate clearance for commercial vessels in the closed position and the commercial vessels will be able to get additional openings provided advance notice is given by calling the number posted at the bridge. Additionally, the Hack-Freight Bridge can be transited at all times but will be tended remotely.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities"

comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit through the bridge.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons: The high vertical clearance of the PATH Railroad Bridge of 40 feet at mean high water should accommodate all present vessel traffic except deep draft. Additionally, vessels may transit the bridge at all other times with a two hour advance notice and can plan their trips accordingly during any closure periods. As for the Hack-Freight Bridge, vessels may transit the bridge at all times.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic

impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the

States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the

distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, and Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the

Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of significant environmental impact from the proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.723 to read as follows:

§ 117.723 Hackensack River.

(a) The following requirements apply to all bridges across the Hackensack River:

(1) The owners of each bridge shall provide and keep in good legible condition clearance gauges for each draw, with figures not less than 18 inches high for bridges below the turning basin at mile 4.0, and 12 inches high for bridges above mile 4.0. The gauges shall be

designed, installed and maintained according to the provisions of section 118.160 of this chapter.

(2) Train and locomotives shall be controlled so that any delay in opening the draw shall not exceed 10 minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting the opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping or reversing.

(3) New Jersey Transit Rail Operations' (NJTRO) roving crews shall consist of two qualified operators on each shift, each having a vehicle which is equipped with marine and railroad radios, a cellular telephone, and emergency bridge repair and maintenance tools. This crew shall be split with one drawtender stationed at Upper Hack and the other drawtender at the HX drawbridge. Adequate security measures shall be provided to prevent vandalism to the bridge operating controls and mechanisms to ensure prompt openings of NJTRO bridges.

(4) Except as provided in paragraphs (b) through (j) of this section, the draws shall open on signal.

(b) The draw of the PATH Bridge, mile 3.0, at Jersey City, shall open on signal provided at least a two hour advance notice is provided by calling the number posted

at the bridge. The draw need not open for the passage of vessel traffic Monday through Friday, except Federal holidays, from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m. Additional bridge openings shall be provided for commercial vessels from 6 a.m. to 7:20 a.m.; 9:20 a.m. to 10 a.m.; 4 p.m. to 4:30 p.m. and from 6:50 p.m. to 8 p.m. provided at least a two hour advance notice is given by calling the number posted at the bridge.

(c) The draw of the Hack-Freight Railroad Bridge at mile 3.1, shall open on signal at all times, except as provided in paragraph (a) (2) of this section. The bridge shall be operated from a remote location at all times, except when it is tended locally. Sufficient closed circuit television cameras, approved by the Coast Guard, shall be operated and maintained at the bridge site to enable the remotely located bridge tender to have full view of both river traffic and the bridge.

(1) Radiotelephone Channel 13/16 VHF-FM shall be maintained and utilized to facilitate communication in both remote and local control locations. The bridge shall also be equipped with directional microphones and horns to receive and deliver signals to vessels.

(2) Whenever the remote control system equipment is partially disabled or fails for any reason, the bridge shall be physically tended and operated by local control

as soon as possible, but no more than 45 minutes after malfunction or disability of the remote system.

Mechanical bypass and override capability of the remote system shall be provided and maintained.

(d) Except as provided in paragraph (a)(2) of this section, the draw of the NJTRO Lower Hack Bridge, mile 3.4, at Jersey City shall open on signal if at least a one hour advance notice is given to the drawtender at the Upper Hack bridge, mile 6.9, at Secaucus, New Jersey by calling the number posted at the bridge. In the event the HX draw tender is at the Newark/Harrison (Morristown Line) Bridge, mile 5.8, on the Passaic River, up to an additional half hour delay is permitted.

(e) Except as provided in paragraph (a)(2) of this section, the draw of the Amtrak Portal Bridge, mile 5.0, at Little Snake Hill, need not open for the passage of vessel traffic Monday through Friday, except Federal holidays, from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m. Additional bridge openings shall be provided for commercial vessels from 6 a.m. to 7:20 a.m.; 9:20 a.m. to 10 a.m.; 4 p.m. to 4:30 p.m. and from 6:50 p.m. to 8 p.m., if at least a one-hour advance notice is given by calling the number posted at the bridge. At all other times the draw shall open on signal.

(f) Except as provided in paragraph (a)(2) of this section, the draw of the NJTRO Upper Hack Bridge, mile 6.9 at Secaucus, N.J. shall open on signal unless the drawtender is at the HX Bridge, mile 7.7 at Secaucus, N.J. over the Hackensack River, then up to a half hour delay is permitted.

(g) Except as provided in paragraph (a)(2) of this section, the draw of the NJTRO HX Bridge at mile 7.7, shall open on signal if at least one half hour notice is given to the drawtender at the Upper Hack Bridge.

(h) Except as provided in paragraph (a)(2) of this section, the draw of the S46 Bridge, at mile 14.0, in Little Ferry, shall open on signal if at least a twenty four hour advance notice is given by calling the number posted at the bridge.

(i) The draw of the Harold J. Dillard Memorial (Court Street) Bridge, mile 16.2, Hackensack, shall open on signal if at least four hours notice is given.

(j) The draw of the New York Susquehanna and Western Railroad bridge, mile 16.3, and the Midtown bridge, mile 16.5, both at Hackensack, need not be opened for the passage of vessels, however, the draws shall be restored to operable condition within 12 months after notification by the District Commander to do so.

Dated: March 19, 2014

V.B. Gifford, Jr.
Captain, U.S. Coast Guard
Acting Commander, First Coast Guard District

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